

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**ORDER AFFIRMING RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE**

On January 23, 2014, the United States Magistrate Judge filed with the court, with copies to the parties, her Recommended Decision on 28 U.S.C. § 2255 Motion. Recommended Decision (ECF No. 245). The defendant/movant filed his objection to the Recommended Decision on February 3, 2014. Objection to Magistrate's Report and Recommendation (ECF No. 246).

I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision, as clarified below, and determine that no further proceeding is necessary.

As Raymond requested, I have taken “a fresh look at the § 2255 petition, rather than rely solely on the recommendation of the Magistrate.” Objection to Magistrate’s Report and Recommendation at 1.

Raymond asserts that the Magistrate Judge mistakenly characterized the bail violation as involving the victim of the federal crime. The bail violation had no impact on my decision at trial or sentencing.

With respect to the other matters that concern Raymond, none of them would have altered the outcome of the trial. The victim's testimony, the testimony of other students, the defendant's own statements captured on videotape, and the nature of his testimony at trial were the telling evidence. In addition to agreeing with the Magistrate Judge, I will address two of Raymond's concerns specifically.

1. In my Findings of Fact and Conclusions of Law finding Raymond guilty, I gave a lengthy explanation of why I found the victim's testimony credible. The additional information that the victim allegedly told her mother that she "felt like she was in a CSI movie" or that her mother told her something to that effect (evidence not presented at the trial) would not have changed my decision to find the victim's testimony credible, and there is no reason to repeat the explanation I gave for choosing her credibility over Raymond's.

2. I stated in my Findings of Fact that I based my findings upon four categories of testimony, one of which was "(b) another young girl's testimony that in October 2007 [about two months after the conduct for which I found Raymond guilty] Raymond touched her buttocks under her skirt at school (defense cross-examination of the girl revealed that this conduct led to a state conviction for Raymond)." Findings of Fact and Conclusions of Law at 2-3 (ECF No. 178). It was not the *fact* of the state conviction that made this

persuasive evidence, but the young girl's credible testimony about an incident similar to the federal charges against Raymond and close in time. Defense counsel legitimately referred to the conviction in cross-examination as part of his effort to suggest that this witness's testimony in federal court had ulterior motives (her mother's expressed dissatisfaction with the penalty imposed by the state court), but the fact of the conviction did not increase her credibility in my mind.

In sum, none of the issues raised in this petition supports Raymond's argument that he received constitutionally ineffective assistance of counsel.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendant/movant's motion for habeas relief under 28 U.S.C. § 2255 is **DENIED** without an evidentiary hearing.

Finally, I find that no certificate of appealability should issue in the event the defendant/movant files a notice of appeal because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

So ORDERED.

DATED THIS 28TH DAY OF FEBRUARY, 2014

/s/D. BROCK HORNBY

D. BROCK HORNBY

UNITED STATES DISTRICT JUDGE